

PATENT COOPERATION TREATY

TRANSLATION

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing (day/month/year) **See Form PCT/ISA/210 (sheet 2)**

Applicant's or agent's file reference

M/ERB-143-PC

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/EP2005/002917

International filing date (day/month/year)

18.03.2005

Priority date (day/month/year)

07.04.2004

International Patent Classification (IPC) or both national classification and IPC

A61B17/32

Applicant

ERBE ELEKTROMEDIZIN GMBH

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

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PCT/EP2005/002917

Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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International application No.
PCT/EP2005/002917

Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	<u>2, 6-12</u>	YES
	Claims	<u>1, 3-5</u>	NO
Inventive step (IS)	Claims	<u>7-9, 11, 12</u>	YES
	Claims	<u>1-6, 10</u>	NO
Industrial applicability (IA)	Claims	<u>1-12</u>	YES
	Claims	<u></u>	NO
2. Citations and explanations:			
1 Reference is made to the following documents:			
D1: DE 199 04 640 A1 (WITTENSTEIN GMBH & CO. KG) 10 August 2000 (2000-08-10)			
D2: WO 02/07798 A (LIBERMANN, OFER) 31 January 2002 (2002-01-31)			
D3: US-A-5 620 414 (CAMPBELL, JR. ET AL.) 15 April 1997 (1997-04-15)			
2 INDEPENDENT CLAIM 1			
2.1 The present application does not meet the requirements of PCT Article 33(1), because the subject matter of claim 1 is not novel within the meaning of PCT Article 33(2). Document D1 discloses (the references between parentheses relate to said document):			
A device for water jet surgery (column 3, lines 30-36), comprising a multiplicity of supply cylinders (column 4, lines 14-19; reference 2) in which a working fluid (column 3, line 36; reference 4) is stored and from which it can be discharged through an outlet into a pressure			

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International application No.

PCT/EP2005/002917

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	<p>line (column 3, line 64, reference 10) by means of a piston (column 3, lines 45-47; reference 6), at least one actuation device (column 3, lines 45-59) for actuating the piston, and an alternating device (implicit in column 4, lines 14-22) for alternating the actuation from the piston of one supply cylinder to the piston of another supply cylinder, in such a way that the working fluid can be discharged from successively emptied supply cylinders.</p> <p>3 DEPENDENT CLAIMS 2-6, 10</p> <p>Claims 2-6, 10 do not contain any features which, in combination with the features of any claim to which they refer back, meet the PCT requirements for novelty and inventive step.</p> <p>3.1 Claim 2: D2 shows an alternating device for continuous fluid supply (see page 5, line 26 to page 6, line 2) which alternates automatically between two containers (see page 6, lines 12-14) (PCT Article 33(3)).</p> <p>3.2 Claim 6: A transport seal that can be opened irreversibly would be provided by a person skilled in the art for sealing the supply cylinder for example (PCT Article 33(3)).</p> <p>3.3 Claim 10: Providing a venting device in a pressure system is common practice (PCT Article 33(3)).</p> <p>4 DEPENDENT CLAIMS 7, 11, 12</p>

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The combination of features contained in the dependent claims is not known from or suggested by the available prior art, the reasons being as follows: An alternating magazine permits faster exchange and re-use of the device. Only D3 discloses an alternating magazine. The device, however, is based on a different operating principle, namely that of an implosion chamber with only one piston, as a result of which a combination of the two documents is not possible.

- 5 The subject matter of claims 1-12 is industrially applicable (PCT Article 33(4)).